



INTERIOR BOARD OF INDIAN APPEALS

Estate of Thomas Elward Lumpmouth

8 IBIA 275 (04/15/1981)

Judicial review of this case:

*Lumpmouth v. Watt*, No. CIV-83-2601W (W.D. Okla. Oct. 21, 1983)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF THOMAS ELWARD LUMPMOUTH

IBIA 80-25

Decided April 15, 1981

Appeal from order of Administrative Law Judge Sam E. Taylor redetermining heirs on reopening of estate.

Affirmed.

1. Indian Probate: Divorce: Indian Custom--Indian Probate: Marriage: Generally--Indian Tribes: Sovereign Powers--Indians: Domestic Relations

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on February 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

APPEARANCES: Mark Lea "Beau" Cantrell, Esq., for appellant; Charlotte Lumpmouth Patterson for appellees.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Roberta Sagebark Lumpmouth (a.k.a. Roberta Sage Turtle or Roberta Sagebark), through counsel, has appealed from an order redetermining heirs on reopening of the above-captioned estate entered by Administrative Law Judge Sam E. Taylor on February 7, 1980. Appellant claims to be the surviving spouse of the decedent, Thomas Elward Lumpmouth, deceased Cheyenne-Arapaho (unallotted). Judge Taylor held that the decedent died intestate without a spouse. Consistent with findings of fact and conclusions of law entered the Estate of Mark Turtle, Sr.,

deceased Cheyenne-Arapaho (unallotted), whose estate is also before the Board for a final probate decision, Judge Taylor held that appellant was the wife of Mark Turtle, Sr., and that she could not, therefore, have been married to Thomas Elward Lumpmouth at the time of his death.

The Board has jointly considered the administrative records in the estate of Mark Turtle, Sr., and the estate of Thomas Elward Lumpmouth because of the common issues involved. Final decisions are rendered this date in both cases.

The Board has undertaken a de novo review of all matters of record in this case and the companion estate of Mark Turtle, Sr. Based on this review and our study of the applicable law, we are satisfied that the Administrative Law Judge's order redetermining heirs on reopening dated February 7, 1980, is correct and should not be disturbed.

The evidence is overwhelming in this case that appellant and Mark Turtle, Sr., were married by common law in the State of Oklahoma. Beginning in 1955, appellant and the decedent cohabited for more than 10 years and had six children, four of whom are on the Cheyenne-Arapaho tribal roll with the surname, "Turtle." Appellant also appears on the Cheyenne-Arapaho roll with this surname. The record reflects that appellant signed criminal charges against the decedent for failing to provide for his minor children. She signed the charges under the name "Roberta Turtle." One such complaint (No. 14446, County Court, Canadian County, State of Oklahoma) was dismissed January 10, 1964, upon a motion filed and signed by "Roberta Turtle" on grounds that she and the defendant "have resumed marital relations and are living in Calumet, Oklahoma." The record also contains an affidavit signed by the decedent on November 7, 1973, which states:

Mark Turtle being first duly sworn upon oath deposes and states: That in February, 1955 he entered into a common law marriage with Roberta Sage Bark. They lived together for thirteen years and had six children, two of whom are now deceased.

We held ourselves out to the public as man and wife. Roberta is shown on the rolls of the Cheyenne-Arapaha [sic] Tribe as my wife. We were never divorced. She is still my wife although we are not now living together.

Appellant submits that while Mark Turtle, Sr., may have believed he was married to her, she never consented to being his common law wife. Under Oklahoma law, mutual consent is required for a common law marriage to be established. Quinten v. Webb, 207 Okl. 133, 248 P.2d 586 (1952). Appellant's own witnesses, however, testified that they regarded her as having been married to Mark Turtle, Sr. See Tr. of September 27, 1979, hearing in estate of Thomas Elward Lumpmouth at 26 (testimony of Nelson Sage, Jr.) and at 29 (testimony of Violet Berniece Franklin).

Appellant contends she is the surviving spouse of Thomas Elward Lumpmouth with whom she lived for a period of years subsequent to living with Mark Turtle, Sr. It is clear that appellant and Thomas Elward Lumpmouth did live together for an extended period of time. However, it was legally impossible for appellant to marry Thomas Lumpmouth without obtaining a divorce from Mark Turtle, Sr., her common law husband.

[1] Administrative Law Judge Taylor was correct in holding that appellant could not have obtained a divorce from Mark Turtle, Sr., under Indian custom. The record establishes that the Cheyenne-Arapaho Tribe discontinued recognizing Indian custom marriages and divorce by adoption of an ordinance approved by the Secretary of the Interior on February 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with the tribe as an incident of its sovereignty, United States v. Mazurie, 419 U.S. 544 (1975), and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates. Estate of Victor Young Bear, 8 IBIA 254, 268 (1981); Estate of Clark Joseph Robinson, 7 IBIA 74, 77 (1978).

Appellant contends that this estate was improperly reopened by the Administrative Law Judge. We disagree. Judge Taylor reopened this estate under authority of 43 CFR 4.242(d) which provides that an Administrative Law Judge may reopen a case within a period of 3 years from the date of the final decision "to prevent manifest error." Judge Taylor's notice of reopening dated February 16, 1979, sets forth the manifest error created by the order determining heirs issued February 13, 1976, and how that error became revealed. Other contentions of appellant not specifically addressed herein are deemed insufficiently pled or supported to merit discussion.

The order redetermining heirs on reopening entered by Administrative Law Judge Sam E. Taylor on February 7, 1980, is affirmed. This decision is final for the Department.

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge

I concur:

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//original signed  
Franklin Arness  
Administrative Judge